

State Board of Education
April 8, 2008
Item K

TEAM: Commissioner

DISCUSSION TOPIC: Prekindergarten Rules

ALIGNMENT WITH GOALS: Goal IA1

STATUTORY AUTHORITY: Act 62 Relating to Prekindergarten Education

BACKGROUND INFORMATION:

The State Board of Education voted to initiate the rulemaking process for prekindergarten education at its November 2007 meeting. On December 20, 2007, the Interagency Committee on Administrative Rules (ICAR) approved moving forward with the draft rules which the Board had reviewed.

An announcement of the proposed Prekindergarten Rules (draft 5.14), and an invitation to submit comments between January 21, 2008, and February 29, 2008, were sent to major newspapers. Notification of the comment period, and of the two public hearings was also sent to various constituencies through email (e.g., Superintendents, Early Childhood listserv, Essential Early Education listserv). The rules were posted on the Department of Education's website.

Written comments were received from approximately twenty different individuals and organizations through email or letters. Additional comments were received in the two public hearings which were held in Montpelier and Rutland. Approximately fifteen people attended each public hearing. All of the comments were compiled, and themes were identified. The DOE/DCF writing team considered the comments, and recommended a certain number of changes. These recommended changes are reflected in the enclosed "track change" document. The new 5.15 draft is presented to the Board for its review. It is important to note that many of the concerns which were voiced address issues which are beyond the scope of the rules, since the underlying issues are part of the statutory mandate. These areas include the requirement for national accreditation or STARS, the out-of-district option, and the ADM cap.

PURPOSE OF DISCUSSION:

To review and discuss the revised draft of the Prekindergarten Rules in preparation for a vote at the Board's May 20, 2008 meeting. The State Board's feedback on the attached draft, as well as anticipated follow-up discussions with the Department for Children and Families, and with stakeholders, will be considered in preparing the final draft.

COST IMPLICATIONS: NA

STAFF AVAILABLE: Richard Cate, Commissioner; James Squires and Manuela Fonseca, Early Education Team; Mark Oettinger, General Counsel.

2600 PREKINDERGARTEN EDUCATION

Selected Definitional Sections and Statutory Authority

See 16 V.S.A. § 11(a)(31) for the definition of “prekindergarten education.” See also 16 V.S.A. § 11(a)(6) for the definition of “kindergarten,” 16 V.S.A. § 1073(a) for the definition of “legal pupil,” and 16 V.S.A. § 1121 regarding mandatory attendance by school-age children.

2601 Statement of Purpose and Applicability

The purpose of prekindergarten education is to provide young children with opportunities to reach their full growth and developmental potential. These rules establish standards for prekindergarten education which may be offered by local school districts in accordance with 16 V.S.A. § 829. Nothing herein shall be construed as mandating the establishment, continuation or expansion of prekindergarten education by a school district, or as creating an entitlement to prekindergarten education.

2602 Definitions

The following definitions shall apply to terminology which is used throughout these rules:

- (1) **Average Daily Membership (ADM).** Average daily membership is defined in accordance with 16 V.S.A. § 4001(1);
- (2) **Developmentally Appropriate.** Developmentally appropriate describes practices which are based upon principles of how children develop and learn, as articulated by the National Association for the Education of Young Children (NAEYC); these practices are responsive to each child’s individual strengths, interests and needs, and are aligned with Vermont’s Early Learning Standards;
- (3) **Effective and Efficient.** A prekindergarten education program that operates effectively and efficiently is one that meets the needs of children and families, produces measured and evidenced outcomes for children in accordance with the Vermont Early Learning Standards, minimizes transitions for children, and does not exceed what it would cost the school district to operate a comparable program;
- (4) **Essential Early Education.** Essential early education (EEE) means special education services and supports which are provided pursuant to Part B of the Individuals with Disabilities Education Act, and in accordance with 16 V.S.A., Chapter 101;
- (5) **Full-time Equivalent for Prekindergarten.** A full-time equivalent for prekindergarten is defined as ten hours of a prekindergarten education program per week. If a child is enrolled in a prekindergarten education program for between six and ten

hours per week, the child is counted as a percentage of one full-time equivalent. A child who is enrolled in a prekindergarten education program for fewer than six hours per week shall not be included in the district's ADM unless the child is in EEE;

(6) **National Accreditation.** National accreditation means accreditation by the National Association for the Education of Young Children;

(7) **Parental Participation.** Parental participation in a prekindergarten education program means the opportunity for parents and guardians to be actively involved in the program, and may include involvement in program development, policy work, program evaluation, curriculum development, and helping in the class;

(8) **Prekindergarten Child.** Prekindergarten child means:

(a) A three or four year old child who is enrolled in a prekindergarten education program;

(b) A child who is receiving essential early education pursuant to 16 V.S.A. § 2965; or

(c) A five year old child who is enrolled in a prekindergarten education program, and who is not yet eligible for, or who is not enrolled in, kindergarten;

(9) **Prekindergarten Education Program.** Prekindergarten education program means services designed to provide developmentally appropriate early development and learning experiences that are, based on Vermont's early learning standards, to children who are three and four years of age, and to five-year-old children who are not eligible for, or enrolled in, kindergarten;

(10) **Program Expansion.** Program expansion is when a school district seeks to increase the number of children included in its ADM count and that results in a substantial modification to the scope of the prekindergarten education program; such an increase would require additional contracts, personnel, with additional providers or the establishment of additional and/or classrooms;

(11) **Qualified Prekindergarten Education Program.** A qualified prekindergarten education program means a program or provider of prekindergarten education which satisfies the educator licensing and program quality standards specified in Sections 2606 and 2607 of these rules;

(12) **School District.** School district is defined in accordance with 16 V.S.A. § (11)(a)(10);

(13) **Step Ahead Recognition System (STARS).** The Step Ahead Recognition System is the department for children and families' graduated quality rating system of for early childhood programs, based upon that department's program quality standards;

(14) **Vermont Early Learning Standards (VELS).** The Vermont early learning standards are state-recognized performance standards and learning outcomes for three and four year old children. ~~and~~

~~(15) **Change in Delivery Model.** Change in delivery model shall mean either the transformation of an in-district prekindergarten delivery model into a private provider model, or the transformation of a private provider prekindergarten delivery model into an in-district prekindergarten delivery model. In the case of a delivery model which includes both in-district and private provider components, change in delivery model shall be defined in the same manner as program expansion under Rule 2602(10).~~

2603 Establishing or Expanding Prekindergarten Education

(1) Prior to a school district's establishment or expansion of prekindergarten education, ~~or change of delivery model,~~ the school district shall engage the community in a collaborative process in order to assess:

(a) The need for, and the level of support for, prekindergarten education within the community;

(b) The estimated number of three and four year old children in the community, and the types and locations of early care and education programs that currently serve these children; and

(c) An inventory of all existing local early care and education providers which meet, or have the potential to meet, the quality standards set forth in Sections 2606 and 2607 of these rules;

(2) The collaborative assessment process shall include parents, existing early child care and education providers, representatives of the regional early childhood council, and other community members;

(3) The commissioner of education and the commissioner of the department for children and families shall jointly develop and publish advisory guidelines which school districts and communities can use to conduct needs assessments and inventories of existing service providers;

(4) Results of the school district's needs assessment and inventory of all existing service providers shall be used in the development of any proposal to establish or expand prekindergarten education. The proposal shall indicate whether ~~the~~ prekindergarten education ~~program~~ will be provided through contracting with existing qualified private providers, ~~or~~ through operating a public school prekindergarten program, or both;

(5) If a school district begins or expands ~~a~~ prekindergarten education ~~program, or changes the delivery model,~~ the district shall use existing qualified private providers to the extent that existing qualified private providers have the interest to participate and have the capacity to meet the district's needs effectively and efficiently;

(6) A school district, after conducting the required collaborative community process, may limit the number or ages of children who are to be enrolled in the prekindergarten education program, in order not to exceed the number of children who may be included in its average daily membership as limited by the provisions of 16 V.S.A. § 4001(1)(C)(ii);

(7) A school district may choose to go beyond the cap established in 16 V.S.A. § 4001(1)(C)(ii), and in so doing, may ~~provide a~~ offer prekindergarten education ~~program~~ to eligible children who will not be eligible to be included in its average daily membership;

(8) When a school board includes in its approved budget funds to provide ~~a~~ prekindergarten education ~~program~~, and when the number of resident prekindergarten children who apply for ~~the~~ prekindergarten education ~~program~~ exceeds either the capacity and/or the number of prekindergarten children who may be included in the district's ADM, the school board shall design and implement a nondiscriminatory method of determining who will be enrolled ~~in the program~~ and/or who will be included in the district's ADM. Districts which use federal and/or state funds or grants to support prekindergarten education and those funds target specific populations, may prioritize serving those children in order to fulfill their grant obligations;

(9) A prekindergarten child who is included in the district's ADM as a three--year--old shall automatically be eligible to be included in the district's ADM as a four--year--old, as long as the child remains a resident of the district; and

(10) ~~A prekindergarten child who is included in his or her district's ADM as a three year old, and who attends a prekindergarten program within his or her district of residence during that year, may request, under Rule 2604(2), to be served outside the district during the following year. The school district shall publicize the availability of prekindergarten education programs in a manner which is designed to adequately inform parents of their nature and availability.~~

2604 Contracting with Existing Qualified Prekindergarten Programs

(1) School districts that provide ~~a~~ prekindergarten education ~~program~~ by entering into contracts with existing qualified providers shall enter into written contracts which, at a minimum, shall include the following provisions:

(a) That the qualified provider shall:

(1) Maintain its status as a qualified prekindergarten education program in accordance with Sections 2606 and 2607 of these rules, and report any change in this status, including alleged or proven regulatory agency accusations or findings of violations of program licensure or registration requirements, to the school district, within five days of such accusation or finding;

(2) Adhere to federal and state laws on non-discrimination which apply to private providers;

(3) Provide a developmentally appropriate curriculum which is aligned with Vermont's early learning standards;

(4) Provide a prekindergarten education program for a minimum of 35 weeks per academic year;

(5) Conduct child development assessments of each-enrolled child enrolled for at least four hours per week, using one or more instruments approved by the department of education and the department for children and families, at least two times per year, and report the results to the school district by June 30;

(6) Provide parents with a report of their children's developmental progress at least two times per year, and offer parents at least two opportunities per year to meet with the teacher;

(7) Describe and provide opportunities for parental participation;

(8) Permit on-site visits, announced or unannounced, by school district staff, and by representatives of the department of education and the department for children and families;

(9) Participate in training which may be required for the purpose of fulfilling the provider's contractual obligations;

(10) Maintain appropriate liability insurance coverage;

(11) Complete reports for enrollment, attendance, child assessment, actual costs of prekindergarten education, finances and other areas, as required by state law, the department of education, and the school district; and

(12) With respect to essential early education students who are enrolled in the prekindergarten education program, comply with all requirements of state and federal laws governing essential early education;

(b) Establish payment provisions according to the following:

(1) Use the template provided by the department of education and the department for children and families to establish the actual costs of operating the prekindergarten education a full-time program;

(2) ~~Divide the actual cost of operating the program by the number of children who are enrolled in the full-time program to arrive at the per-child actual cost.~~ The actual cost shall serve as the basis for the contract negotiations between the district and any qualified private provider which proposes to provide prekindergarten services education on behalf of the district;

(3) The school district will pay the negotiated cost of providing the agreed upon services for up to 10 hours per week; part of the negotiated cost may include provision of a licensed teacher in lieu of an exchange of funds, and

(4) Providers may not charge parents for services paid for by the school district. Providers may charge parents up to the difference between the actual cost of the contracted services and the amount paid for those services by the district. No district shall count any child in its ADM unless it is directly providing, or contractually

paying to provide, at least six hours of prekindergarten services for that child unless the child receives EEE services.

(c) — ~~That the school district shall:~~

~~(1) — Publicize the availability of prekindergarten education programs in a manner which is designed to adequately inform parents of their nature and availability; and —~~

~~(2) — Identify and quantify the costs which specifically and directly flow from the provision of prekindergarten services, and report those costs to the department of education on forms which shall be provided by the department of education;~~

(2) A parent or guardian residing in a school district which provides prekindergarten education may request in writing that the school district enter into a contract with a qualified prekindergarten education program within or outside of the district. The school district shall consider the request, and shall submit its determination and rationale, in writing, to the parent or guardian, within 30 days of receiving the request;

(3) A private provider that meets the program quality standards and requisite staff qualifications which are specified in Sections 2606 and 2607 of these rules, may submit a written request to a school district that provides ~~a~~ prekindergarten education ~~program~~ for the purpose of entering into a contract to provide a prekindergarten education program, if the provider is located within the school district. The school district shall consider any such request, and shall submit its determination and rationale, in writing, to the provider, within 30 days of receiving the request. If denied, a provider may re-apply for the next academic year; and

(4) A private provider that meets the program quality standards and requisite staff qualifications set forth in Sections 2606 and 2607, and which is located outside of a school district that provides ~~a~~ prekindergarten education ~~program~~, may submit a written request to such a school district that it be permitted to enter into a contract to provide a prekindergarten education program for one or more of the district's resident children. Such provider shall include in its written request evidence that prekindergarten children who reside in such school district currently attend, or wish to attend, the provider's program. The school district shall consider any such request, and shall submit its determination and rationale, in writing, to the provider, within 30 days of receiving the request. If denied, a provider may re-apply for the next academic year.

2605 Districts Operating Prekindergarten Education Programs

(1) Subject to the requirements of Rules 2603(5) and 2608(3), a school district may also provide ~~a~~ prekindergarten education ~~program~~ by establishing and operating a program either within a public school, or through a facility which is not physically part of a public school. All such district-operated prekindergarten education programs, regardless of where they are physically located, shall be licensed through the department for children and families, and shall be in good regulatory standing; and

(2) Any district-operated prekindergarten education program shall:

(a) Maintain its status as a qualified prekindergarten program in accordance with Sections 2606 and 2607 of these rules, and shall report any change in this status, including alleged or proven violations of program licensure or other requirements, to the department of education, within five days of such change;

(b) Adhere to federal and state laws regarding non-discrimination;

(c) Provide a developmentally appropriate curriculum which is aligned with Vermont's early learning standards;

(d) Provide prekindergarten education for a minimum of thirty-five (35) weeks per academic year;

(e) Conduct child development assessments of each child enrolled for at least four hours per week, child, using one or more instruments approved by the department of education, at least two times a year, and report the results of those assessments to the department of education by June 30;

(f) Provide parents with a report of their children's developmental progress at least twice per year, and offer parents at least two opportunities per year to meet with the teacher;

(g) Describe and provide opportunities for parental participation;

(h) Permit on-site visits, announced and unannounced, by representatives from the department of education and the department for children and families;

(i) Complete reports for enrollment, attendance, child assessment, costs of prekindergarten education, finances and other areas as required by state law and the department of education; and

(j) Comply with all requirements of any applicable state and federal laws governing essential early education.

2606 Qualified Prekindergarten Education Programs

(1) Only children enrolled in qualified prekindergarten education programs shall be included in a school district's ADM count. A prekindergarten education program shall be considered qualified only if it meets all of the following criteria:

(a) The program receives and maintains at least one of the following quality program recognition standards:

(1) National accreditation through the National Association for the Education of Young Children (NAEYC);

(2) A minimum of four stars in Vermont's Step Ahead Recognition System (STARS), with at least two points in each of the five arenas; or

(3) Three stars in the STARS system if the program has a plan approved by the commissioner for children and families and the commissioner of education to

achieve four or more stars within three years, including at least two points in each of the five arenas, and if the program has met intermediate steps;

(b) The program is currently licensed or registered, as applicable, by the department for children and families, and is in good regulatory standing;

(c) The program's curricula are aligned with the Vermont early learning standards;

(d) The program provides opportunities for parental involvement and participation. These opportunities may include involvement in ~~developing~~ development, ~~policy~~ work, program evaluation, curriculum development, and helping in the class; and

(e) Program staff meet the professional standards described in Section 2607 of these rules.

2607 Staff Qualifications

In addition to meeting all the applicable early childhood program licensing regulations of the department for children and families, qualified prekindergarten education programs shall meet the following staff qualifications:

(1) Teachers in district-operated prekindergarten education programs shall be licensed with an endorsement in either early childhood education or early childhood special education;

(2) Each contracted licensed center shall employ, or contract for the services of, at least one teacher who is licensed and endorsed in either early childhood education or early childhood special education;

(3) The operator of each registered home shall either be a teacher who is licensed and endorsed in either early childhood education or early childhood special education, or shall employ, or contract for the services of, at least one teacher who is licensed and endorsed in either early childhood education or early childhood special education, or in the alternative, shall receive regular, hands-on active training and supervision from a teacher who is licensed and endorsed in either early childhood education or early childhood special education. Under this last arrangement, the regular, active training and supervision shall occur at least ~~one hour per week per ADM-counted child, up to a maximum of~~ three hours per week, and during each of the 35 weeks per year in which ADM-counted children are enrolled. The registered home shall maintain appropriate written documentation of the supervision on location; and

(4) Nothing in these rules shall be construed as restricting the ability of a district or a private provider from filling a staff position with an individual who holds a provisional or emergency license. Under such circumstances, however, the district, the private provider, and the holder of the provisional or emergency license, shall meet all of the terms and

conditions of VSBPE Rules 5350-5364 and their successor rules. When a private provider is unable to employ a licensed educator for the purpose of becoming a qualified private provider, a superintendent may, on behalf of the requesting qualified private provider, and pursuant to the terms and conditions of VSBPE Rules 5350-5364 and their successor rules, apply to the ~~Department~~ department of ~~e~~Education for a provisional or emergency license for one or more individual(s) whom the qualified private provider wishes to have provide prekindergarten program services under these rules. Under such circumstances, the superintendent shall monitor the progress and completion of the required two-year plan for obtaining a Level I license. The mere act of a superintendent applying, on behalf of a qualified private provider, for a provisional or emergency license, shall not obligate the district to contract with that (or any other) qualified private provider.

2608 Reporting the Costs of Prekindergarten Education

(1) To ensure transparency and accountability for prekindergarten education costs, school districts shall submit financial reports, on forms provided by the commissioner of education, detailing their costs for prekindergarten education ~~programs~~, on an annual basis, and in accordance with the following provisions:

(a) Providers under contract with a school district shall report to the contracting district all allowable prekindergarten education ~~program~~ costs as specified in ~~its~~ their contracts, on forms provided by the commissioner of education; and

(b) School districts shall compile the financial reports from all of their contracted prekindergarten education programs, and shall report those costs to the commissioner of education on or before August ~~15~~ of every year;

(2) School districts shall report their expenditures for both contracted and district-operated prekindergarten education programs, and for essential early education, by source of funds (e.g., education fund, state grant, federal funds), to the commissioner of education, on or before August 1 of every year; and

(3) School districts shall specify the identifiable costs for ~~their~~ prekindergarten education ~~programs~~ and essential early education services in their annual budgets, and in their annual reports to the community.

2609 Reporting on the Effects of Prekindergarten Education

(1) Each school district shall provide annual data on the progress of all of its children who are both: (a) attending a prekindergarten education program for four or more hours; and (b) included in its average daily membership, to the commissioner of education;

(2) The school district shall, after consultation with its own and contracted prekindergarten education ~~program~~ providers, select one or more assessment instruments from the state-approved list in order to measure its prekindergarten children's level of development during the first six weeks beginning of the year and again during the last ~~six~~ weeks of the program on an annual basis; and

(3) Each school district shall compile and report the results of the assessments which are to be conducted hereunder, and shall do so in accordance with the guidance which shall be provided by the commissioner of education and the commissioner for children and families.

2610 Grounds for Administrative Appeal Regarding a School District's Prekindergarten Education Program

The following actions of a school district may be made the subject of an administrative appeal:

(1) A parent or guardian of a prekindergarten child, or an existing provider, may appeal a district's determination regarding whether an existing provider meets the standards set forth in Rule 2606 or Rule 2607;

(2) A parent or guardian of a three- or four-year-old child, or ~~a parent or guardian~~ of a five-year-old child not yet eligible for or enrolled in kindergarten or, a potential qualified provider, may appeal a district's proposed plan to establish or, expand ~~or~~ change the delivery model of a prekindergarten education program, on the grounds that the plan was formulated in violation of these rules;

(3) A parent or guardian of a prekindergarten child, or a qualified provider, may appeal a district's rejection of a request pursuant to Rule 2604(2), (3) or (4) or its compliance with the requirements of Rule 2603, on the grounds that the district did not conform to the procedural requirements of an applicable statute or rule;

(4) Appeals shall be filed in writing by the appellant, with both commissioners, within 30 calendar days of the alleged violation which gives rise to the appeal. Written appeals must contain a description of the facts upon which the appellant relies and an explanation of why the appellant believes that the district's actions violated the requirements of the statute or rule. The appellant shall also provide copies of the written appeal to all parties within the time limits allowed by these rules.

(5) For purposes of appeals under this rule, party status shall be limited to the appellant(s) and the school district. The school district shall have ~~15-30~~ calendar days from receipt of the appellant's submission to respond in writing to the submission, and shall provide copies of its response to all parties;

(6) Appeals shall be considered jointly by the commissioners of education and children and families. The commissioners may request additional written submissions from one or both of the parties, and under such circumstances, copies of both the request(s) and the response(s) shall be sent to all parties by the commissioners. The commissioners, in their discretion, may hold a hearing, either at the request of one or more of the parties, or on their own initiative, ~~to be conducted by their designee~~;

(7) The burden of proof shall be on the appellant. The standard of review shall be by a preponderance of the evidence;

(8) The commissioners shall jointly issue a written decision within 30 calendar days of the close of the record, and the commissioners' decision shall be final; ~~and~~

~~(9) — Nothing in these rules shall limit a school district's discretion in negotiating or entering into contracts except as is specifically provided herein, nor shall these rules limit a person from seeking other remedies provided by law.~~

2611 Effective Date

These rules shall become effective on July 1, 2008. Subject to statutory authorization, ~~S~~school districts that have been are providing prekindergarten education either through contracts with private providers and/or district-operated programs and including prekindergarten children in their ADM count prior to the effective date of these rules, shall have until April 1, 2009 to comply with section 2606(1)(a) of the rules. ~~not be required to conduct the needs assessment which is otherwise required by Rule 2603 hereof unless they propose to expand their current systems of prekindergarten education, or they propose to change their delivery model.~~

2612 Repeal 9200.4

Repeal State Board of Education rule 9200.4 on calculating the Full-time Equivalent of Essential Early Education/Prekindergarten Pupils.